


NORTHAMPTON POLICE DEPARTMENT Administration & Operations Manual		
Policy: Citizen Complaints & Internal Investigations		AOM: P-251
Massachusetts Police Accreditation Standards Referenced: [52.1.2], [52.1.1], [52.2.1], [52.2.4.c], [52.2.4.a], [52.2.1.b], [52.2.3], [52.2.4.b], [52.2.2], [52.1.3], [52.2.6.a], [52.2.6.b&c], [52.2.6.d], [52.2.6.e], [52.2.8], [52.2.7]		Issuing Authority Jody Kasper Chief of Police
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I. Introductory Discussion

A. A relationship of trust and confidence between the employees of this police department and the citizens of the community is essential to the successful accomplishment of law enforcement objectives. All police employees are expected to conduct themselves, whether on or off duty, in such a manner as to reflect favorably upon themselves and the Department. The consistently high quality of this standard of conduct establishes and maintains the reputation of the Department and

encourages the support of the community for police purposes and goals.

The Internal Affairs function is important for the maintenance of professional conduct in a law enforcement agency. The integrity of the Northampton Police Department depends on the personal integrity and discipline of each employee. To a large degree, the public image of this Department is determined by the quality of the Internal Affairs Section in responding to allegations of misconduct against the Department or its officers.

The primary responsibility of the Internal Affairs function is to respond to allegations of misconduct against the police department and its employees. Internal Affairs will be responsible for recording, registering, and controlling the investigation of complaints against employees; supervising and controlling the investigation of alleged misconduct within the Department; and, maintaining the confidentiality of internal affairs investigations and records. Internal Affairs will ensure that the integrity of the Department is maintained through an internal system where objectivity, fairness and justice are assured by proper and impartial investigation and review.

The responsibility for supervising, conducting, coordinating, and maintaining the Internal Affairs function of the Department lies with the Operations Division Commander (ODC). However, the Chief of Police shall be closely involved in all decisions regarding findings and dispositions.

Since an Internal Affairs investigation involves allegations against the police department and its employees, it is essential that the process not only be lawful, but confidential as well. This necessitates strict confidentiality and full adherence to procedure. [52.1.2]

The objectives of an Internal Affairs investigation are:

1. Protection of the public;
2. Protection of the employee;
3. Protection of the Department;
4. Corrective action, including removal of unfit personnel; and
5. Correction of procedural problems.

All alleged or suspected violations of laws, ordinances, department rules, regulations, policies & procedures, and orders (verbal or written), must be investigated according to the procedures outlined for each. These include: [52.1.1]

1. Alleged violations reported to the Department's superior officers by other members of the Department, either orally or in writing;
2. Alleged violations, observed or suspected, by Department superior officers; and
3. Citizens' complaints of alleged police misconduct which are made in person, by letter, by telephone, or anonymously (includes prisoner complaints).

II. Policy

- A. It is the policy of the Northampton Police Department to investigate all complaints against the department and its employees, regardless of the source of such complaints, through a regulated, fair, and impartial internal affairs program. [52.1.1]
- B. A complaint shall be an allegation of misconduct, mistreatment, or unethical practices.

III. Complaint Procedures

A. Recording of Complaints:

1. The Officer-in-Charge (OIC) of the station at the time the complaint is made shall be responsible for the efficient and complete recording of any complaint made by a citizen in person or received by telephone or mail.
 - a. This initial contact between a complaining citizen and police authorities is a most important stage in the complaint process as the complainant is often tense, angry, and emotionally upset, and the potential for hostility is great.
 - b. The utmost courtesy, patience and cooperation should be extended to all citizens registering complaints or otherwise inquiring about complaint procedure.
 - c. No person should be denied an opportunity to register a complaint, nor should any such person be directed to return or call back later. Whenever possible the complainant should be spoken with in private.
2. **AOM P251.a Internal Affairs Complaint Report** will be used to record all complaints of misconduct, mistreatment, or unethical practices whether registered by a citizen, initiated from within the police department, or forwarded by another governmental agency.
 - a. The following information should be included on the complaint report form:
 - (a.) Date and time of complaint report;

- (b.) Name, address and telephone number of the complainant;
- (c.) Name address and telephone numbers of any witnesses to the reported incident;
- (d.) Name, rank, badge number (or description) of the employee against whom the complaint is made;
- (e.) Date, time and location of the reported incident;
- (f.) Complainant's description of the incident which resulted in the complaint;
- (g.) Signature of complainant (if obtainable);
- (h.) Signature of parent or guardian, if the complainant is under eighteen (18) years of age;
- (i.) Name, rank and signature of department employee receiving complaint report. Complaint reports should be received by a supervisor in all cases, if possible.

B. Receipt of Complaints: [52.2.1]

1. When a complaint is made in person, the complainant shall be requested to complete **AOM P251.a Internal Affairs Complaint Report**. The supervisor receiving the complaint will ensure that the complainant receives a photo copy of his/her complaint to serve as a written verification that the complaint has been received. The supervisor shall ensure that his/her own name, rank and signature are on the form prior to submitting a copy to the complainant. [52.2.4,c]
 - a. Citizens making complaints in person should be requested to read over their completed report, to make any necessary corrections or additions and to sign their complaint.
 - b. If a complainant refuses to sign a complaint, notation to that effect should be made on the complaint form.

- c. If an officer on the street is approached by a citizen regarding a complaint of alleged misconduct against an employee of the police department, the officer shall inform such person that his/her complaint should be directed to the OIC of the station.
2. When a complaint is received over the telephone, the OIC shall be responsible for obtaining all required information and recording such on **AOM P251.a Internal Affairs Complaint Report**. He/she shall also be responsible for ensuring that the complainant is sent a copy of his/her own complaint to serve as a written verification that the complaint has been received. [52.2.4,c]
 - a. Citizens making complaints by telephone should be informed that their signed complaint is requested; however, no telephone complaint should be refused or rejected because the complainant does not wish to sign a complaint form or because he/she does not wish to be identified.
3. When a complaint is received by mail, the OIC shall ensure that the allegations are documented on **AOM P251.a Internal Affairs Complaint Report** and the original communication attached thereto. He/she shall also be responsible for ensuring that a copy of such complaint form is sent to the complainant to serve as written verification that the complaint has been received. [52.1.1] [52.2.4.c]
 - a. If the information received is insufficient or incomplete, the complainant shall be contacted, if possible, and informed of the Department's complaint procedure and any necessary additional information obtained.

4. Intra-Departmental Complaints of misconduct against another department employee shall be initiated by the preparation of **AOM P251.a Internal Affairs Complaint Report**.

a. All intra-departmental complaints are to be submitted directly to the ODC or the Chief of Police, who will review such complaints and make a determination as to what action will be taken.

5. Prisoner Complaints: Any prisoner who alleges misconduct or mistreatment by a department employee shall be advised by the OIC of his/her right to submit a complaint report form in the usual manner. Such complaints should be investigated and processed in the same manner as other citizen complaints.

6. The ODC shall provide written notice to the complainant verifying receipt of the complaint for processing. [52.2.4,a]

C. Immediate Resolution of a Complaint:

1. In some cases a complaint can be immediately resolved to the complainant's satisfaction by the OIC, when taking an initial report. This should be reported in writing to the ODC and, if possible, acknowledged in writing to the complainant. [52.2.1]

a. This immediate resolution can often be accomplished if the incident is clearly not of a serious nature, or arises from a misunderstanding or lack of knowledge of the law, policy or procedures, or of the limitation of a police officer's authority.

b. Under no circumstances, however, will a justifiable complaint be refused, delayed, or otherwise rejected in this manner.

D. Processing Complaints:

1. No complaint should be rejected solely because it is anonymous, as anonymous complaints can often be a valuable source of information and should be considered on their individual merits.
2. Care must be taken, however, that the Department employees are not subjected to unjust, frivolous or capricious complaints.
3. All complaint reports shall be forwarded to the Operations Division Commander (ODC) for review and assignment.
 - a. The ODC will assign an identifying number to every complaint report, so that the processing of complaints can be carefully monitored.
4. Inform the Officer: Any employee who is subject of an internal affairs investigation shall be provided with a written statement of the allegations via **AOM P251.b Notification of Charges/Allegations**. Further, the employee shall be directed to this policy for a statement of their rights and responsibilities relative to the investigation. [52.1.6]

IV. Investigative Procedures

A. Complaints to be Investigated by a Supervisor [52.1.1] [52.2.1]

1. Complaints to be investigated by a Supervisor may include such offenses as:
 - a. Alleged rudeness;
 - b. Tardiness; and
 - c. Insubordination.

2. At the completion of the investigation, the Supervisor shall submit a full written report to the ODC regarding the findings. [52.1.1,c]

B. Complaints Investigated by Internal Affairs [52.1.1]
[52.2.1]

1. The criteria for determining the categories of complaints to be investigated by Internal Affairs include, but are not limited to: [52.1.1,b]
 - a. Complaints involving allegations of criminal conduct on the part of the employee;
 - b. Complaints involving allegations of civil rights infractions on the part of the employee;
 - c. Complaints involving a second or subsequent documented violation of a departmental rule, regulation or policy;
 - d. Complaints that, if substantiated, would rise to disciplinary action more severe than a verbal reprimand to the employee;
 - e. Complaints involving investigations that would require the employee to participate in a line-up, submit to a medical or laboratory examination, submit financial disclosure statements, provide photographs for a photographic line-up, or submit to a polygraph examination; or
 - f. Complaints which would require extensive follow-up or extensive investigative activity.
2. A supervisor will be assigned to an internal affairs investigation by and under the supervision of, the ODC. Whenever an internal affairs investigation is assigned to a Supervisor, he/she shall submit to the ODC a completed **AOM P251.i Internal Affairs Investigator's Report** regarding the findings of such investigation. [52.1.1]

c. Investigation of Complaints

1. Any Internal Affairs investigation, that rise to the level of an internal affairs investigation, must be commenced as soon as is reasonably possible upon receipt of the complaint and must be completed within twenty-one (21) days (unless extenuating circumstances exist). [52.2.3]
 - a. If the substance of a complaint, if proven, would be of grave nature or is an accusation of a serious crime and immediate action is deemed necessary, the Chief of Police, or the Operations Division Commander designated by the Chief of Police, shall be notified forthwith in order that an investigation can be initiated without delay. The ODC will notify the Chief of Police of the accusation. This notification may be done verbally or in writing. [52.2.2]
 - b. If exigent circumstances preclude completion of an internal departmental investigation within twenty-one (21) days, the ODC shall notify the employee and the Chief of Police in writing of those circumstances.
 - c. In addition, if exigent circumstances preclude completion of an investigation within twenty-one (21) days **and** the complaint is made by a citizen, the ODC shall ensure that the citizen is re-contacted concerning the status of the case within the 21 days. **A *Periodic Status Report Form Letter*** can be used for this purpose. In no case shall the complainant go longer than 21 days without being re-contacted. [52.2.4,b]
2. The ODC shall be responsible for providing the Chief of Police with status reports on the progress of the investigation. [52.2.2] [52.1.3]

- a. The ODC shall be responsible for overseeing and conducting, if necessary, Internal Affairs investigations, and shall report directly to the Chief of Police. [52.2.2]
3. An internal affairs investigation may inquire into a department employee's on-duty or off-duty conduct if such inquiry is reasonably and directly related to the employee's performance of duty, if such conduct affects the employee's fitness or ability to continue in the police service, or if it reflects discredit on the Department.
4. Criminal Investigation
 - a. If it is determined, after a preliminary investigation, that allegations against a department employee could result in a criminal prosecution, the accused employee must be granted all applicable constitutional and statutory rights. In such cases, the criminal investigation may be conducted under the direct supervision of the Detective Bureau Commander (DBC) or the jurisdictional agency, as determined by the Chief of Police, in conjunction with the District Attorney's office.
 - b. Prior to being questioned regarding alleged personal involvement in criminal activity, a department employee who is under arrest, or who is the focus of a criminal investigation, shall be given the warnings and rights required by the *Miranda* decision, including the right to have an attorney present during any such questioning.
 - c. If this procedure is followed, any voluntary statements made thereafter could be admissible in a criminal proceeding, and may otherwise be used for departmental disciplinary purposes.

d. A department employee who is questioned about alleged personal involvement in criminal activity which could result in a criminal prosecution, cannot be discharged or otherwise penalized solely for invoking the right to remain silent as guaranteed by the Fifth Amendment or for refusing to sign a waiver of immunity. However, as discussed below, an employee may be compelled to answer questions narrowly drawn and related to his/her on or off duty conduct, and may be disciplined (including discharge) for failure to answer truthfully.

5. Administrative Investigations

a. If it is determined as a result of a preliminary investigation, that allegations made against a department employee could result in departmental disciplinary action, the accused employee is entitled to a fair and objective investigation and resolution of the charges made.

b. All department employees, when requested by the Chief of Police, or by a superior officer designated by the Chief of Police, must respond fully and truthfully to all questions regarding their performance of official duties or their off-duty misconduct which affects their fitness or ability to remain in the police service, and any failure to answer completely and truthfully to such inquiries may be punished by appropriate disciplinary action, including dismissal from the Department.

(a.) The official conducting the inquiry must, at the time of the inquiry, specify to the employee being questioned the precise repercussions (i.e., suspension,

discharge, or the exact form of discipline) that may result if the officer fails to respond.

- (b.) When a department employee is ordered to submit a report or to answer questions in the face of job sanctions, that employee receives transactional immunity from criminal prosecution for any offenses to which the compelled testimony relates.

Note: *The Supreme Judicial Court has held that Article 12 of the Massachusetts Declaration of Rights requires “transactional” immunity to supplant the privilege against self-incrimination when a Police Officer is being compelled in the face of job sanctions to answer questions concerning possible criminal activities connected with his/her employment. Transactional immunity grants “immunity from prosecution for offenses to which compelled testimony relates.”*

- (c.) If the questions specifically, directly, and narrowly relate to the officer’s performance of official duties or his/her off-duty conduct which affects his/her fitness or ability to remain in the police service, and if such employee is informed that he/she will receive transactional immunity from criminal prosecution, he/she must answer or face disciplinary action, including dismissal from the Department, for refusing to answer such questions.
- c. No double jeopardy exists when a department employee is found not guilty in court of criminal charges and is then found guilty of departmental charges after a disciplinary hearing, as the department charges are

administrative in nature and can be sustained by a “preponderance of evidence” rather than the criminal court standard of “beyond a reasonable doubt.”

- d. In conducting internal administrative investigations, there is no legal obligation for the Department to provide employees with an opportunity to consult with an attorney before being questioned on work-related matters (*NLRB v. Weingarten*, 95 S.Ct. 959 (1975)); however, a request for an attorney or an employee representative to be present will be granted if the investigation is not thereby unduly delayed.
 - (a.) If possible, for minor offenses, any interview or questioning should take place during the employee’s regular duty hours;
 - (b.) Any interview or questioning should not be prolonged without reasonable rest periods and the opportunity for meals and such other personal necessities as are reasonable required.
 - (c.) A department employee shall not be harassed or threatened during questioning.
6. In conducting investigations of alleged employee misconduct, all appropriate investigative techniques and methods should be employed, consistent with legal requirements and all necessary concern for the individual rights of the accused employee.
 - a. An internal administrative investigation should be conducted with the same degree of

professional competence as is devoted to a criminal investigation.

- b. Upon orders of the Chief of Police, or designee, an employee may be required to submit to a medical, psychological or laboratory examination, at the Department's expense. This examination must be specifically directed and narrowly related to a particular internal affairs investigation being conducted by the Department. [52.2.6,a]
- c. A employee may also be required to be photographed and can be compelled to stand in a lineup for identification in connection with an administrative investigation, and a refusal can be the basis for an additional disciplinary charge of refusal to obey a lawful order. Such a lineup should be fairly constructed and not unfairly suggestive and should not be used for an administrative investigation where criminal charges are contemplated. [52.2.6,b & c]
- d. An employee's personal property, including his/her home, car and other property, is protected from unreasonable search and seizure under the Massachusetts Constitution, and any evidence illegally obtained may not be used as evidence in an administrative proceeding (*Board of Selectmen of Framingham v. Municipal Ct. of City of Boston*, 373 Mass. 783, 369 N.E. 2d 1145). Employees should clearly understand that there is no expectation of privacy regarding Department property furnished or supplied to them, such as offices, desks, file cabinets, computers, lockers, or vehicles, and that these may be subject to administrative access or inspection at any time.
- e. An employee may be compelled to submit a financial disclosure statement as part of an internal affairs investigation provided such

statement is material to the investigation being conducted. [52.2.6,d]

- f. Under the provisions of M.G.L. Ch. 149 §19B employees may be required to submit to a polygraph or lie detector test in connection with an internal administrative investigation if such test is conducted under the direction of a law enforcement agency in the course of a departmental investigation of criminal activity, and under such circumstances, officers may face disciplinary action for refusal. [52.2.6,e]
- 7. It is recommended that the complete interview with an employee in all internal administrative investigations should be tape recorded or documented by a qualified stenographer.

D. Withdrawn Complaints

- 1. If during the progress of an internal investigation, the complainant indicates a desire to withdraw the complaint, every effort should be made to ensure that this decision is made voluntarily, and a signed statement to this effect should be obtained from the complainant.
- 2. When a complaint is withdrawn, the person assigned to investigate shall provide a full written report of the investigation to date to the ODC. The ODC shall then discuss the merits for the termination of the investigation with the Chief of Police. [52.2.2]
- 3. Any attempt, directly or indirectly, on the part of a department employee to obstruct any internal investigation, to influence or intimidate any witness, or to threaten or persuade any complainant to withdraw or abandon his/her complaint, is prohibited and will be treated most severely.

V. Report of Administrative Investigation

- A. At the conclusion of any administrative investigation, a full written report shall be prepared by the assigned investigator for submission to the ODC and forwarding to the Chief of Police. This report shall include the following: [52.2.2]

- 1.The original complaint report;
- 2.Any additional statements taken from the complainant or statements obtained from witnesses;
- 3.Any statements made or reports submitted by the department employee under investigation;
- 4.A summary statement of all evidence gathered;
- 5.A statement of any mitigating circumstances;
- 6.An evaluation of the complaint and a recommendation as to the appropriate adjudication and disposition.

- B. Upon receipt of the written report of investigation, the Chief of Police should take appropriate action based upon findings in the particular case. The Chief of Police and the ODC shall together determine the appropriate adjudication and disposition based upon the finding(s) of fact. The adjudication shall be classified as one of the following: [52.2.8]

- 1.Sustained - The allegation is supported by sufficient evidence to indicate that the allegation is true.
- 2.Sustained in Part - Certain allegations were supported by sufficient evidence to indicate that they were true, while other allegations were found to be not sustained.
- 3.Not Sustained - There is insufficient evidence to neither prove nor disprove the allegation.

4.Exonerated - The incident occurred, but the department member acted lawfully and properly.

5.Unfounded - The allegation is either false or not factual.

6.Filed - Placed on file and may be reopened if additional evidence or information is received.

c. The ODC or designee shall inform the employee, in writing, of the conclusion and disposition of the administrative investigation in a timely manner (Refer to **AOM P251.d Investigation Classification Notification**). [52.2.8]

d. The ODC shall notify the complainant formally, in writing, of the conclusion and disposition of the investigation, from one of the six previously described classifications (Refer to **AOM P251.g Result of Investigation Notice to Complainant**). [52.2.4.c]

1.If a disciplinary hearing is deemed necessary, the complainant shall be notified that his/her testimony will be required at that time.

e. If the department employee is cleared of the charges made, he/she shall be officially exonerated in writing (Refer to **AOM P251.d Investigation Classification Notification**).

VI. Relief From Duty [52.2.7]

A. In accordance with **AOM P250 Development of Discipline**, any supervisor, or acting supervisor, may temporarily relieve from duty, and place on temporary administrative leave, any member:

1. Who is in their opinion physically or psychologically unfit for duty; or

2. Pending disposition of an internal investigation where it would be unwise or improper for the officer to continue on duty.
 - a. The Chief of Police and the Division Commanders shall be notified immediately when an employee is relieved from duty under any of the conditions described above. Decisions regarding continued administrative leave shall be made by the Chief of Police or designee.

VII. Confidentiality of Internal Affairs [52.1.3]

- A. In order to ensure that the individual rights of officers who are the subject of an Internal Affairs investigation are protected, all materials relevant to that investigation shall be kept strictly confidential and properly secured by the ODC.
- B. No statement regarding an Internal Affairs investigation will be made or issued to the media unless the charges have been sustained and action has been taken or initiated against the officer or employee. The Chief of Police is the only one to authorize the release of any statement.
- C. A complete file of records on the investigation of all citizen and internal complaints against any agency employee or the agency shall be kept in the office of the ODC. These files shall contain all documents pertaining to the investigation including supporting investigative information. These files shall be treated as internal confidential investigative personnel records, and shall be considered to be an exception to the public records disclosure requirements. [52.1.2]

VIII. Liaison With District Attorney

- A. Any Internal Affairs investigation which may, or does, result in criminal charges being brought against an officer shall require the District Attorney's office to be appraised of the case for the purpose of advising on legal issues and ultimate prosecution, if necessary. Contact shall be made through the ODC.